

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DAN GIURCA,

Plaintiff,

-against-

MONTEFIORE HEALTH SYSTEM, INC., et  
al.,

Defendants.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 12/9/2019

18-CV-11505 (PGG) (BCM)

ORDER

**BARBARA MOSES, United States Magistrate Judge.**

For the reasons stated on the record during the conference held on December 9, 2019, it is hereby ORDERED that:

1. No later than **December 13, 2019**, counsel shall meet and confer in good faith to exchange all information needed for defendants to identify the 39 patient files requested by the plaintiff.
2. No later than **December 20, 2019**, defendants shall review the requested records and counsel shall meet and confer again, in good faith, to determine whether and to what extent defendants can obviate the asserted need for one or more of the patient files at issue by stipulating to the facts alleged in the complaint concerning that patient.
3. No later than **January 10, 2020**, the parties shall submit a joint status report updating the court on the following:
  - a. Whether all requested patient files have been identified;
  - b. Whether the parties' dispute as to some or all of the requested files has been resolved;
  - c. To the extent that the parties' dispute as to other files has not been resolved, what stipulations have been offered, and why the parties disagree as to

whether those stipulations are sufficient to obviate the asserted need for the relevant file.

4. If defendants continue to contend that their facilities are covered by N.Y. Mental Hygiene Law § 33.13:

- a. Defendants shall submit admissible evidence showing that those facilities are "licensed or operated by the office of mental health or the office for people with developmental disabilities," *id.* § 33.13(a), or otherwise subject to the restrictions set forth § 33.13(c);
- b. The parties shall succinctly provide their views as to whether federal law, including the Federal Rules of Civil Procedure and regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (*see, e.g.*, 45 C.F.R. § 164.512), or New York law, including Mental Hygiene Law § 33.13, controls this Court's authority to order the production of the requested records.

Dated: New York, New York  
December 9, 2019

**SO ORDERED.**



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**BARBARA MOSES**  
**United States Magistrate Judge**